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§ 3430.5 Determination of entitlement to lease.

§ 3430.5-1 Rejection of application.

(a) The authorized officer shall reject the application if:

(1) The applicant fails to show that coal exists in commercial quantities on the applied for lands; or

(2) The applicant does not respond to a request for additional information within the time period specified in § 3430.3-2 or § 3430.4-2 of this title; or

(3) The applicant otherwise failed to meet statutory or regulatory requirements; or

(4) The applicant does not permit declassification of proprietary information within the time period specified in § 3430.2-2(b) of this title.

(b)(1) The authorized officer shall reject those portions of an otherwise acceptable application which were not available for prospecting when the underlying prospecting permit was issued because the lands were claimed, developed or withdrawn from coal leasing.

(2) In any action under this subsection, the authorized officer shall reject all lands in each affected smallest legal subdivision or, if practicable, each affected 10 acre aliquot part of the subdivision.

(c) The authorized officer may reject any preference right lease application that clearly cannot satisfy the commercial quantities test without preparing additional National Environmental Policy Act documentation and/or a cost estimate document as described in §§ 3430.3-2, 3430.4-3 and 3430.4-4 of this title. The following procedures apply to rejecting these preference right lease applications:

(1) When an applicant clearly fails to meet the commercial quantities test as provided in this part, the authorized officer may notify the applicant:

(i) That its preference right lease application will be rejected;

(ii) Of the reasons for the proposed rejection;

(iii) That the applicant has 60 days in which to provide additional information as to why its preference right lease application should not be rejected; and

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(iv) Of the type, quantity, and quality of additional information needed for reconsideration.

(2) If, after the expiration of the 60-day period, the authorized officer has no basis on which to change his/her decision, the authorized officer shall reject the preference right lease application.

(3) If the authorized officer reconsiders and changes the decision to reject the preference right lease application, he/she shall continue to adjudicate the preference right lease application in accordance with §§ 3430.3-2, 3430.4-3, and 3430.4-4 of this title.

[44 FR 42628, July 19, 1979, as amended at 47 FR 33143, July 30, 1982; 52 FR 25800, July 8, 1987]

§ 3430.5-2 Appeals, lack of showing.

(a) If the application is rejected because the existence of commercial quantities of coal has not been shown, the applicant may, in accordance with the procedures in part 4 of this title, file a notice of appeal and a statement of the reasons for the appeal.

(b) The applicant shall have the right to a hearing before an Administrative Law Judge if the applicant alleges that the facts in the application are sufficient to show entitlement to a lease.

(c) In such a hearing, the applicant shall bear both the burden of going forward and the burden of proof to show, by a preponderance of evidence, that commercial quantities of coal exist in the proposed lease area.

§ 3430.5-3 Determination to lease.

A preference right lease shall be issued if, upon review of the application, any available land use plan and the environmental assessment or environmental impact statement, the authorized officer determines that:

(a) Coal has been discovered in commercial quantities on the lands applied for;

(b) The applicant has used reasonable economic assumptions and data to support the showing that coal has been found on the proposed lease in commercial quantities; and

(c) The conditions or protective lease stipulations assure that environmental

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damage can be avoided or acceptably mitigated.

[47 FR 33143, July 30, 1982]

§ 3430.5-4 Lease exchange.

(a) Upon the request of the applicant, the Secretary may initiate lease exchange procedures under subpart 3435 of this title if the lands under application have been shown to contain coal in commercial quantities.

(b) Upon the request of the authorized officer, or at the request of the regional coal team or the Governor of the affected State(s), the Secretary may initiate lease exchange procedures under subpart 3435 of this title if:

(1) The lands under application have been shown to contain commercial quantities of coal;

(2) All or a portion of the proposed lease has been assessed as lands which should be unavailable for coal development because of land use or resource conflicts or as lands which are unsuitable for coal mining under the provisions of subpart 3461 of this title; and

(3) The lands are exempted from the application of any relevant unsuitability criteria or the Secretary lacks the authority to prevent damage to or loss of the land use or resource values threatened by lease operations.

[47 FR 33143, July 30, 1982, as amended at 48 FR 37656, Aug. 19, 1983]

§ 3430.6 Lease issuance.

§ 3430.6-1 Lease terms.

Each preference right lease shall be subject to the terms provided for Federal coal leases established in part 3470 of this title.

[47 FR 33144, July 30, 1982]

§ 3430.6-2 Bonding.

The lease bond for a preference right lease shall be set in accordance with subpart 3474 of this title.

§ 3430.6-3 Duration of leases.

Preference right leases shall be issued for a term of 20 years and for so long thereafter as coal is produced in commercial quantities as defined in § 3483.1 of this title. Each lease shall be subject to readjustment at the end of the first 20-year period and at the end

of each period of 10 years thereafter in accordance with subpart 3451 of this title.

[44 FR 42628, July 19, 1979. Redesignated and amended at 47 FR 33144, July 30, 1982; 50 FR 8627, Mar. 4, 1985]

§ 3430.7 Trespass.

Mining operations conducted prior to the effective date of a lease shall constitute an act of trespass and be subject to penalties specified by § 9239.5 of this title.

Subpart 3431—Negotiated Sales: Rights-of-Way

§ 3431.0-1 Purpose.

The purpose of this subpart is to provide procedures for the sale of coal that is necessarily removed in the exercise of a right-of-way issued under Title V of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1761 *et seq.*).

§ 3431.0-3 Authority.

(a) The regulations of this subpart are issued under the authority of the statutes cited in § 3400.0-3 of this title.

(b) These regulations primarily implement section 2(a)(1) of the Mineral Leasing Act of 1920, as amended by section 2 of the Act of October 30, 1978 (30 U.S.C. 201(a)(1)).

§ 3431.1 Qualified purchaser.

Any person who has acquired or applied for a right-of-way under Title V of the Federal Land Policy and Management Act of 1976 which requires the removal of coal deposits as a necessary incident to development, construction or use of the right-of-way is qualified to purchase the coal to be removed.

§ 3431.2 Terms and conditions of sale.

(a) Coal to be removed in connection with a right-of-way shall be sold to the qualified purchaser only at the estimated fair market value, as determined by the Secretary.

(b) Where the right-of-way is being used in connection with the development of a lease, the removal of coal from the right-of-way shall be subject to the same requirements for health